



POLICE DEPARTMENT

January 11, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Carlos Ruiz
Tax Registry No. 899791
Quartermaster Section
Disciplinary Case Nos. 82212/06, 82228/06 & 83617/08

The above-named member of the Department appeared before the Court on October 4, 2010, charged with the following:

Disciplinary Case No. 82212/06

1. Said Police Officer Carlos Ruiz, while assigned to the 115th Precinct, while off-duty, on or about June 25, 2006, at a location known to this Department, in [REDACTED], did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Officer pointed his finger at a person known to this Department and stated, "I'll blast you in your face, I'm a NYPD cop. What are you going to do?" *(As amended)*

P.G. 203-10 Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Carlos Ruiz, while assigned as indicated above, on the above date, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Officer improperly operated a motor vehicle while his driver's license was suspended. *(As amended)*

P.G. 203-10 Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

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3. Said Police Officer Carlos Ruiz, while assigned as indicated above, on the above date improperly failed to notify his Commanding Officer that his driver's license had been suspended.
(As amended)

P.G. 203-03 Page 1, Paragraph 5

COMPLIANCE WITH ORDERS
GENERAL REGULATIONSDisciplinary Case No. 82228/06

1. Said Police Officer Carlos Ruiz, while assigned to the Quartermaster Section, while off-duty, on or about August 31, 2006, in [REDACTED], did engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Officer made threatening and rude remarks and displayed both his middle fingers to [REDACTED] Police Officer Donald Karnich, who assisted in the arrest of said Officer's wife, Denise Ruiz, earlier that day and held up a paper containing the license plate number belonging to Police Officer Donald Karnich's personal vehicle. *(As amended)*

P.G. 203-10 Page 1, Paragraph 5

PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Carlos Ruiz, while assigned as indicated above, on or about August 31, 2006, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said officer improperly operated a motor vehicle outside the terms of his restricted license which only permitted him to drive to and from his place of employment.

P.G. 203-10 Page 1, Paragraph 5

PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONSDisciplinary Case No. 83617/08

1. Said Police Officer Carlos Ruiz, while assigned to the Quartermaster Section, on August 30, 2006, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Officer, after having been served with a Notice of Petition to appear in [REDACTED] for a Landlord/Tenant proceeding, disregarded said notice and failed to appear in court. *(As amended)*

P.G. 203-10 Page 1, Paragraph 5

PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Carlos Ruiz, while assigned to the Quartermaster Section, on October 4, 2006, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said officer, after having been served with a summons to appear in [REDACTED] for a Small Claims action, disregarded said notice and failed to appear in court. *(As amended)*

P.G. 203-10 Page 1, Paragraph 5

PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through counsel, entered a plea of Not Guilty to Specification No. 1 in Case No. 82212/06. He pleaded Guilty to Specification Nos. 2 & 3 and testified in mitigation of the penalty. The Respondent pleaded Not Guilty to Specification No. 1 in Case No. 82228/06. He pleaded Guilty to Specification No. 2 and testified in mitigation of the penalty. The Department moved to dismiss Case No. 83617/08. A stenographic transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

In Case No. 82212/06, the Respondent is found Not Guilty of Specification No. 1. Having pleaded Guilty to Specification Nos. 2 & 3, he is found Guilty. In Case No. 82228/06, the Respondent is found Guilty of Specification No. 1. Having pleaded Guilty to Specification No. 2, he is found Guilty. Case No. 83617/08 is dismissed.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called [REDACTED] Police Officer Donald Karnich, Gary Lorandini, and Sergeant Michelle Kemp as witnesses.

[REDACTED] Police Officer Donald Karnich

Karnich had been a member of the [REDACTED] Police Department ([REDACTED] PD) for seven years. His previous employment included the correctional departments of both [REDACTED] and New York City.

Karnich testified that at approximately 8:00 a.m. on August 31, 2006, he responded to the Respondent's [REDACTED] residence in search of the Respondent's son, [REDACTED] who was the subject of active warrants. While there, he observed the Respondent's wife, [REDACTED] who had an active stay-away order of protection prohibiting her from being near the children. Seeing that [REDACTED] was in violation of the order of protection, he arrested her and notified Child Protective Services (CPS) to have the children removed from the house.

While waiting for CPS to arrive, there were words exchanged between the Respondent and Karnich. Karnich could not recall exactly what was said, but the Respondent stated words to the effect of, "This isn't over, you know, we will meet again." Over the course of a half-hour, the Respondent made these comments to Karnich "possibly twice." Karnich described the Respondent's demeanor as "calm" but "a little agitated."

After CPS arrived, Karnich transported [REDACTED] to the station house and processed her arrest. At the end of his tour, he reported to a "relief point," got into his personal vehicle, and started to drive home. Karnich explained that because the precincts were so large in [REDACTED]

[REDACTED], they had relief points, where officers could hand off Department cars and equipment to members working the next tour, rather than going back to the command itself.

As Karnich approached the intersection of [REDACTED], he observed the Respondent in a gas station parking lot on his left side. Karnich, "stunned," drove into a vacant parking lot across the road from the Respondent. When Karnich looked in his rearview mirror, he observed the Respondent looking upset, motioning with his hands, and gesturing with his middle finger. He then saw the Respondent hold up a piece of paper with something written on it, point at him, and then drive away.

Karnich called the [REDACTED] dispatcher and requested that a sector be sent to pull the Respondent over. On-duty police officers subsequently stopped the Respondent and arrested him. When Karnich looked inside the Respondent's vehicle, he saw that what the Respondent had written on the piece of paper was Karnich's personal license plate number. Karnich feared that the Respondent intended to run the license plate number in order to obtain his address. Thus, the next day Karnich changed his car registration address to a post office box (PO box) and had an order of protection put in place for himself and his family.

Karnich testified in the criminal case against the Respondent, but he was found not guilty there.

On cross-examination, Karnich testified that he usually drove through the vacant lot as a shortcut on his way home. When Karnich was stopped at a stop sign there on the day in question, he saw the Respondent approximately 15 feet away. The Respondent was just sitting in his car. Karnich pulled into the vacant lot across the street because he was so "[s]tunned" to see the Respondent there. The gas station lot was approximately a mile from the Respondent's house.

Karnich testified that the Respondent's conduct that day made him believe that he was in danger. Karnich believed, at the time, that the Respondent was committing the crime of harassment or stalking. Karnich did not see what was written on the piece of paper until after the police stopped the Respondent and the paper was removed from the car. When he saw the Respondent hold up the piece of paper at the gas station, however, "the only thing on my mind was the fact that he wrote down my license plate number." Before on-duty personnel stopped the Respondent's vehicle, Karnich followed him driving westbound on [REDACTED].

Karnich could not recall if his original reason for going to the Respondent's house that day was to arrest [REDACTED] or [REDACTED]. Nor could he recall if he entered the Respondent's house through the door or a window. He could remember only one instance of entering a house through a window, and that was years ago in the town of [REDACTED].

Gary Lorandini

Gary Lorandini (Gary) was 29 years old and a resident of [REDACTED]. He testified that on June 25, 2006, he was at the graduation party of his cousin [REDACTED]. The party was held at the [REDACTED] home of his aunt and uncle, [REDACTED] and [REDACTED]. There were approximately 60 people there. At one point, a fight commenced after the Respondent's son [REDACTED], spit in a girl's face. The people present called their friends, and the incident spilled out onto the street. At one point, somebody pulled a knife on [REDACTED]. Gary believed that the Respondent's daughter, [REDACTED], displayed the knife. According to Gary, [REDACTED] also drove her car onto the lawn "mak[ing] like to hit everybody" and struck him in the leg. Gary denied that he ever jumped on the hood of [REDACTED]'s car.

Gary testified that the police responded, and a couple of people were arrested. After the police left, the Respondent arrived at the scene, identified himself as a member of the Department, and stated, "I'll pull out a gun and shoot everybody at this fucking party."

On cross-examination, Gary described the scene as chaotic. When [REDACTED] drove onto the lawn, she was trying to drive away. Because the street was narrow, she needed to make a four- or five-point turn to get out. It was during that process that the car went up onto the lawn. [REDACTED]'s car grazed Gary's knee.

The Respondent arrived at the scene shortly after [REDACTED] drove onto the lawn. When the Respondent made the comment about the gun, Gary was standing 10 to 12 feet away. The Respondent talked loudly but was not screaming. Gary was standing next to his uncles and cousins (including [REDACTED]), and everybody answered the Respondent by yelling at him to "get the fuck out of here." Gary did not know if anybody threatened the Respondent. No bottles were thrown. The police were summoned back to the location. Alcohol was being served that day, and people had "a couple drinks."

Sergeant Michelle Kemp

Kemp, a 19-and-a-half-year member of the Department, had been assigned to the Queens North Investigations Unit. At the time of trial, she was assigned to the 109 Precinct. In 2006, while assigned to Queens North Investigations, she investigated the allegation involving the Respondent's harassment of [REDACTED] ([REDACTED]). On August 9, 2006, she conducted a telephone interview of [REDACTED]. [REDACTED] told Kemp that on June 25, 2006, the Respondent exited

his vehicle, put his hand up in the air, and stated, "I will blast you in the face. I am an NYPD cop. What are you going to do?"¹

On cross-examination, Kemp testified that [REDACTED] was uncooperative. She explained that on several occasions [REDACTED] refused to speak with her. Once or twice when she called, he even pretended to be somebody else. In interviews with [REDACTED]'s relatives, his mother, sister, and uncle all told Kemp that they never heard the Respondent make the alleged statement. Kemp learned in her investigation that the scene at the party was chaotic. She also learned that the Respondent called 911 to report that beer bottles were being thrown at his car. There were many 911 calls made that night.

The Respondent's Case

The Respondent called Sergeant Benedict Vitale as a witness and testified on his own behalf.

Sergeant Benedict Vitale

Vitale was assigned to the Internal Affairs Bureau at the time of trial, but was assigned to Queens North Investigations in 2009. In that role, he attended the Respondent's criminal trial concerning the August 2006 incident with Karnich. Vitale took notes while Karnich testified, and he prepared a worksheet about it the next day (see Respondent's Exhibit [RX] A, worksheet, dated Dec. 10, 2009).

The worksheet stated that Karnich testified that he went to the Respondent's house to arrest [REDACTED] for two active warrants. The Respondent let him into the house through the back

¹ The Advocate represented to the Court that Kemp mistakenly believed during her interview with Daniel that the session was being recorded. That is, a machine was supposed to record the call but failed to do so.

door. On cross-examination, however, Karnich testified that he might have entered the house through an open window. The Respondent was found not guilty of [REDACTED]
[REDACTED]

On cross-examination, Vitale testified that his worksheet did not capture every word Karnich said. It was just a summary of the testimony.

The Respondent

The Respondent, a 19-and-a-half-year member of the Department, testified that on June 25, 2006, he got a telephone call from [REDACTED] informing him that [REDACTED] was being arrested for disorderly conduct after getting into a fight at a party. The Respondent was leaving work at the time. He was not armed. He told [REDACTED] to meet him at a McDonald's near the arrest scene. When they met, [REDACTED] informed the Respondent that [REDACTED] was also arrested but had not yet been transported to the station house. The Respondent asked [REDACTED] to take him to the arrest scene so that he could speak with the police officers there. He asserted that his intent was to find out what was going on and see if he could be of assistance. He was also concerned about his wife and son. [REDACTED] who was transporting her two young siblings, led the Respondent to the [REDACTED] house in a separate car.

It was dark outside when the Respondent got to the scene. There were approximately 30 people in front of the house, and there were beer cans and bottles all over. Six people approached the Respondent's car. According to the Respondent, two of the men (one of whom was Gary) "came up to the car in a menacing way." The Respondent explained that the men were in a fighting position and screamed, "Get the fuck out of here, get out of my face, what the fuck are you doing here?" The Respondent feared for the safety of his children and wanted to

calm things down. The Respondent got out of the car and identified himself as a police officer. He held up his Department identification card, and he asked the men "can you please back away from the car." He denied raising his voice, but said that he spoke loudly enough for the men to hear him.

The Respondent testified that he neither threatened to shoot anybody nor used his finger in a menacing way to indicate shooting somebody. The men repeated to the Respondent that he should "get the fuck out," and the crowd became chaotic. Everybody was screaming.

The Respondent instructed [REDACTED] to drive away. The block was narrow, and [REDACTED] needed to make a four-point turn to get out. People were throwing beer cans at [REDACTED]'s car, and Gary jumped on the hood. The Respondent testified that at no point did [REDACTED] accelerate her car, jump onto the lawn, or strike Gary as was described by Gary in his testimony. [REDACTED] was subsequently arrested for reckless endangerment. She was not arrested for vehicular assault or any sort of felony charge. Her penalty consisted of community service.

Once the Respondent drove far enough away to feel safe, he called 911 and asked for a police response to the party house. He told the 911 operator that beer cans and a basketball had been thrown at the car. The Respondent was subsequently arrested [REDACTED]
[REDACTED]

The Respondent testified that he was at home with [REDACTED] and the children on the morning of August 31, 2006. He was still in bed when the police knocked on his door. Before he could answer it, Karnich and his partner entered the house through the bedroom window. Karnich arrested [REDACTED]. At no point that morning did either officer mention [REDACTED]

The Respondent had prior contact with Karnich. Once, in June 2006, after their arrests at the party, Karnich came to the house in search of [REDACTED]. When the Respondent asked Karnich

why he was looking for [REDACTED] Karnich refused to provide an explanation. The Respondent asked Karnich to leave. On another day, the Respondent was driving with his mother-in-law when Karnich pulled the car over. Karnich claimed that the inspection sticker was expired. The Respondent's mother-in-law asked how Karnich could have seen that from across the street. No summonses were given, and Karnich let them go with a warning. In addition, the Respondent's house was in Karnich's sector, and Karnich passed by on numerous occasions.

The Respondent testified that after his wife was arrested on August 31, 2006, and the children were removed from the house by CPS, a CPS investigator called because the children needed clothes. The Respondent packed some clothing and started to drive toward CPS. He conceded that he had a restricted license and was not supposed to be driving at the time. He explained that he, nevertheless, decided to drive to CPS because he considered bringing clothes to the children an emergency.

On the way, the Respondent stopped at a gas station off of [REDACTED]. The gas station was located less than a half-mile from his house, and he went there everyday to buy lottery tickets. When he stepped out of his car on that day, he looked to the right and saw Karnich stopped at a stop sign. According to the Respondent, he did not pay much attention to Karnich. He just walked into the store and bought a lottery ticket and cigarettes. When he exited the store and saw that Karnich was now parked across the street and looking at him, the Respondent extended both hands with his palms raised and *all* of his fingers pointing up. He then got back into his car and started driving westbound on [REDACTED]

While stopped at a traffic light in [REDACTED], the Respondent observed Karnich stopped one car length behind him. The Respondent, believing that Karnich's conduct should be reported, wrote Karnich's license plate number down on a piece of paper. He then started to

drive toward the nearest station house to make a complaint against Karnich for harassment. Before he could get there, however, he was stopped by [REDACTED] police officers. The Respondent was subsequently arrested [REDACTED]. He was found not guilty at his criminal trial.

The Respondent conceded that his driver license had been suspended for failure to pay his insurance. He was unable to pay for a period of two or three months. He requested assistance from the insurance company but was denied. After two or three months, he was able to re-start the insurance payments and also paid off all penalties. He conceded that during the lapse, he continued to operate his car and did not notify his commanding officer.

On cross-examination, the Respondent testified that before going to the [REDACTED] house on June 25, 2006, he knew that the party had turned violent. [REDACTED] informed him that [REDACTED] had been "jumped" by four people, [REDACTED] had allegedly displayed a knife, and other fights had broken out at the location. He drove from his precinct in Queens to the [REDACTED] location with a suspended license. He did not ask anybody for a ride, nor did he attempt to take the [REDACTED]

[REDACTED] He stated that he wanted to get to the party as quickly as possible. Before his arrival, he spoke with an [REDACTED] PD officer about [REDACTED] arrest. The Respondent knew that he could have seen his son at the station house, but he chose to go to the party instead. He reiterated that he did not threaten anybody there.

The Respondent knew on August 31, 2006, that there was an active Family Court stay-away order of protection prohibiting [REDACTED] from being near the children. The order was issued in response to [REDACTED]'s arrest at the graduation party, but the Respondent stated that there was also "prior history" between [REDACTED] and the children. [REDACTED] was, nevertheless, living at home with the children on that day. The Respondent knew at the time that this was in violation of the

order. It took 35 to 45 minutes for CPS to respond to the house. For most of that period, Karnich waited outside.

The Respondent admitted that when he saw Karnich in the parking lot later that day, it was the Respondent that initiated contact by gesturing at Karnich. The Respondent raised his hands as a way of expressing, "What is going on?"

On the occasion that Karnich came looking for [REDACTED], the Respondent was "[a] little bothered" but not "angry" over by the fact that Karnich would not answer his questions. The Respondent admitted that when Karnich stopped the Respondent and his mother-in-law for an expired inspection sticker, the sticker was in fact expired.

Upon questioning by the Court, the Respondent testified that at the time of the June 2006 incident, [REDACTED] was 17 and [REDACTED] was 18 or 19. It took him approximately an hour to drive from work to the McDonald's where he met [REDACTED]. Upon his arrival there, [REDACTED] informed him that [REDACTED] had been arrested 10 to 15 minutes earlier. He explained that he accepted the ACD for [REDACTED], because he had just been found not guilty of the [REDACTED], and that was what his attorney advised him to do.

FINDINGS AND ANALYSIS

Disciplinary Case No. 82212/06

Specification No. 1

The Respondent is charged with threatening an individual during an off-duty dispute. The Respondent testified that on June 25, 2006, he received a phone call from his daughter, [REDACTED]. Many high school students had converged on a graduation party in the community of [REDACTED], and a fight broke out. [REDACTED] told the Respondent that his son, [REDACTED], had gotten

arrested. The Respondent was just ending his tour, and drove to a McDonald's near the party location. It took about an hour to get there; the Respondent worked at the 115 Precinct in Jackson Heights. Once the Respondent arrived at the McDonald's, [REDACTED] informed him that his wife, [REDACTED], had also appeared at the party and was arrested for displaying a knife. The Respondent and [REDACTED] went to the party house together, driving in separate cars.

The Respondent admitted that under the terms of his suspended license, he was only allowed to drive to and from work. While he testified that he went to the party location to find out what was going on and see if he could be of assistance to the authorities, he knew that it had been over an hour since [REDACTED] was arrested. It was only when the Respondent arrived at the McDonald's that he learned of his wife's arrest, so that had occurred some time in the past as well. Nevertheless, the Respondent chose to insert himself into the situation, driving there without a valid license. While he is not charged with interfering with a police investigation, his conduct casts doubt on his claim that he only went to the party to assist.

Gary Lorandini testified about his encounter with the Respondent. Gary stated that the party was at the home of his uncle and aunt, [REDACTED] and [REDACTED]. Their children, Gary's cousins, were present too; one of them was [REDACTED]. Gary confirmed that the party was a wild scene and that alcohol was being served. He agreed that [REDACTED] and the Respondent arrived around the same time. Gary asserted that [REDACTED] was operating her vehicle with such fervor that she rammed into the crowd of people, including him, standing on the lawn. Gary testified that the crowd was yelling that the Respondent should "get the fuck out of here." Gary contended that the Respondent said, "I'll shoot everyone here."

The Department presented the hearsay testimony of [REDACTED] Kemp, the Department investigator, spoke to [REDACTED] over the phone but, the Advocate stated, the recording

device malfunctioned. Kemp testified that [REDACTED] told her the Respondent said, "I'll blast everyone in the face, I'm an NYPD cop, what are you going to do?"

Gary Lorandini testified that after the Respondent's remarks, the crowd continued to tell him to "get the fuck out of here."

The Court does not credit the hearsay account of [REDACTED]. Although hearsay is admissible in this forum, see Matter of Ayala v. Ward, 170 A.D.2d 235 (1st Dept. 1991), there are significant reasons for caution here. Kemp conceded that she had concerns about [REDACTED]'s credibility during the investigation. He refused to answer her questions, going to the extent of pretending to be someone else on the phone when Kemp called. And this conduct was from not a child but someone that was in his 20s at the time of the party and the investigation. Further, the Court cannot make its own assessment of [REDACTED]'s credibility because he failed to appear at trial. The Court was unable to observe his demeanor, explore possible motives to lie, or assess the credibility of his account after the test of cross-examination. This is especially true here because of the element of alcohol, which could have affected [REDACTED]'s memory of the event.

Furthermore, a tape and transcript of Kemp's interview with [REDACTED] could not be admitted because of a technological error. The interview was performed over the phone, but the investigator's taping machine malfunctioned and failed to record the interview. Kemp testified about the interview based on her memory and the prepared worksheet. This manner of proffering [REDACTED]'s version of events was the best the Department could do under the circumstances, but it is far from a reliable form of hearsay. See Case No. 83945/08, signed Apr. 29, 2009.

The account of Gary Lorandini was also problematic. He displayed combativeness in court toward defense counsel when there was an objection to speculation in Gary's testimony

that [REDACTED] “intentionally” drove toward the crowd. Gary erupted at this objection, viewing it as an attack on his credibility. This display was consistent with the Respondent’s account of the partygoers as acting violently and chaotically. *Cf. Case No. 84756/08*, signed Nov. 22, 2010 (witness was combative toward counsel and the Court, to the point of questioning its directive to answer counsel’s question).

There are other reasons for caution in accepting Gary’s account. His description of [REDACTED]’s driving indicated that she drove straight toward the crowd in an attempt to hit them with her vehicle. Yet she was charged only with misdemeanor reckless endangerment, see Penal Law § 120.20. It leads the Court to conclude that Gary was prone to exaggeration. See Case No. 83879/08, signed June 16, 2009 (witness described police officer as 6'4" to 6'5" and 350 to 375 pounds, perhaps half a foot and over 100 pounds off; additionally, his account of officer lifting complainant high over a vehicle was unlikely because it would have been tactically unwise and inconceivable to do so).

Further, Gary testified that when the Respondent threatened the partygoers, everyone remained and kept telling the Respondent to “get the fuck out of here.” This testimony actually supports the Respondent’s account. If the partygoers were arguing with an individual who then told them that he was a police officer and would shoot them all, it is unlikely that they would remain there to hector and pelt him with vulgarities. This holds even truer if [REDACTED]’s specific account is examined, in which the Respondent said, “I’ll blast you in your face, I’m an NYPD cop, what are you going to do?”

On the other hand, Gary’s account supports the Respondent’s testimony that he identified himself as an NYPD officer and displayed his ID card, but did not threaten anyone, with violence or otherwise. Considering the testimony from both sides concerning the behavior and general

disposition of the crowd, it makes sense that they would have continued to yell “get the fuck out of here” at the Respondent had he merely identified himself.

The Respondent conceded that he accepted an adjournment in contemplation of dismissal (ACD) in criminal court to resolve the charge of [REDACTED]

[REDACTED] As a matter of law, however, an ACD is not an admission of guilt, see Criminal Procedure Law (CPL) § 170.55 (8), and the ACD defendant does not allocute to the facts of the criminal complaint. [REDACTED]

[REDACTED]
[REDACTED].” Finally, the Respondent testified that he took the ACD right after his acquittal on the separate [REDACTED] (as the People made him an offer to do so). The Respondent’s assertion that he accepted the ACD to put the [REDACTED] charges behind him makes sense in this context.

The Respondent admitted at the Department trial that under the terms of his suspended license, he was only allowed to drive to and from work. While he testified that he went to the party location to find out what was going on and see if he could be of assistance to the authorities, he knew that it had been well over an hour since [REDACTED] was arrested. Thus, it is difficult to see what assistance he could have been at the scene. While the Respondent is not charged with interfering with a police investigation, his conduct casts doubt on his claim that he only went to the party to assist and makes him less credible in general. But even if the Respondent went there to confront the other partygoers, he is not charged with getting into an argument with individuals. He is specifically charged with threatening and taunting [REDACTED]
[REDACTED] (identified by the Advocate as the person referenced in the specification) that he was going to shoot him in the face, adding that he was an NYPD officer. The Department failed to

prove by a preponderance of the credible evidence that this threat was made. In any event, it is unlikely that, having done so, the Respondent would then have called 911, as he did. As the Respondent's attorney pointed out on summation, he would essentially be calling the police on himself.

Because the Department failed to prove that the Respondent made the specific charged threat, the Court finds him Not Guilty of the first specification in this case.

Specification Nos. 2 & 3

Having pleaded Guilty to the second and third specifications in the first case, the Respondent is found Guilty.

Disciplinary Case No. 82228/06

Specification No. 1

The Respondent is charged with engaging in several acts of harassing, taunting and threatening a police officer who had come to his home on [REDACTED]. [REDACTED]

[REDACTED] Police Officer Donald Karnich testified that he came to the Respondent's residence to arrest his wife, [REDACTED], or his son, [REDACTED]. There was evidence that [REDACTED] and [REDACTED] had legal problems. [REDACTED] Child Protective Services (CPS) had gotten an order of protection against [REDACTED] in favor of the minor children in the home. [REDACTED] or [REDACTED] had some kind of outstanding warrant.

As a result of Karnich's visit to the home, [REDACTED] was arrested and the children were taken into CPS custody. Karnich alleged that while at the home, the Respondent taunted him, saying "This isn't over."

Karnich testified that after finishing the assignment, he went end of tour and signed out, at a “relief point” location in [REDACTED], used because the precinct was so large in area. He then drove south on [REDACTED] toward the intersection with [REDACTED]. Karnich observed the Respondent at a gas station. The “stunned” Karnich was concerned that the Respondent was following him. He pulled across the east-west street to a vacant lot (which he also used as a shortcut to continue south on [REDACTED]). There, he observed the Respondent making some kind of motion with his hands, concluding that the Respondent was directing his middle finger at him. The Respondent was also holding up a piece of paper with writing on it.

Karnich began following the Respondent and reported the incident to the [REDACTED] Precinct, believing it to be possibly stalking or harassment. When the Respondent was arrested by on-duty [REDACTED] officers, a piece of paper with the license plate number of Karnich’s personal vehicle was found in the Respondent’s car.

The Respondent stated that after the children were taken into custody, CPS called him and said they needed clothing. He dropped off the clothing, then went to his usual gas station to purchase fuel and a lottery ticket. There, the Respondent said that *he* observed Karnich staring at *him*. The Respondent drove away, but believed Karnich was following him. The Respondent wrote down Karnich’s license plate and planned to go to a precinct and complain about him, but got arrested first.

The Respondent testified, and argued, that Karnich was biased against him and was thus unworthy of belief. The Respondent asserted that Karnich had it out for him, as evidenced by his continued targeting of the family. The Respondent testified that Karnich even pulled over his mother-in-law while he was in the car, claiming that the registration or emissions sticker on the

windshield had expired. The mother protested that Karnich could not have seen this while they were driving.

The Court rejects the Respondent's claims of bias. He admitted that not only was the sticker expired, but Karnich let them off with a warning. It was also undisputed that four adult members of the Respondent's family had issues relating to law enforcement. In one night less than three months before the August 2006 incident, all of them had gotten arrested at a high school graduation party. The Respondent's [REDACTED] home was in Karnich's sector. The Court views Karnich's interactions with the Respondent and his family as nothing other than proactive police work, something this Department wants from its own officers. The Court will not view that same dedication as evidence of bias just because it happened in the proverbial "small town cop" environment.

The Respondent's testimony about Karnich's alleged bias actually supports the Department's case in another facet. He admitted that he was upset about what he viewed as Karnich unfairly targeting his family. This makes it more likely that the Respondent would have made disparaging remarks to Karnich like "This isn't over." It also makes it more likely that he would have gestured at Karnich, written down his license plate number, and shown it to him in a taunting manner.

The Court rejects the Respondent's claim that the judge in the [REDACTED] case, acting as the finder of fact, discredited Karnich by finding the Respondent not guilty. That is just not necessarily the case. The Respondent was charged with [REDACTED]

[REDACTED] charge, it contains elements that must be proven beyond a reasonable doubt. One of those elements is that the defendant must intentionally engage in a

course of conduct. The defendant must know, or reasonably must have known, that this conduct caused the target “reasonable fear of material harm” to his health, safety or property.

The criminal court did not issue a written opinion or expand orally on its acquittal. The trial transcript was not admitted at trial; both sides represented that the file was sealed upon acquittal pursuant to CPL § 160.50 and neither side sought to unseal it. The notes taken by Vitale (see Respondent’s Exhibit [RX] A), the Department investigator who monitored the trial, were not verbatim. Nonetheless, even if Vitale’s notes are a complete and accurate account of the trial, the criminal court validly could have concluded that there was no intentional course of conduct, as opposed to a chance encounter at the gas station. See People v. Stuart, 100 N.Y.2d 412, 426 (2003) (course of conduct requires mens rea of intent, excluding accident, inadvertence or chance encounter); cf. People v. Graziano, 816 N.Y.S.2d 699, 2006 N.Y. Misc. Lexis 648 (App. Term, 2d Dept., Mar. 14, 2006) (rejecting claims of a single, constitutionally-protected outburst in harassment case; defendant lay in wait for his ex-fiancée at a bar and blocked her exit, and when she came out with an escort, whom defendant believed was her current boyfriend, he pelted them both with threats and vulgarities). Such a finding would have been independent of any assessment concerning Karnich’s credibility. In any event, the Respondent is not charged in the Trial Room with the [REDACTED] offense, but with conduct prejudicial to the good order, efficiency and discipline of the Department by making obnoxious remarks, displaying his middle fingers, and holding up a piece of paper with Karnich’s license plate number on it.

The Court rejects the Respondent’s argument that Karnich’s Department hearing testimony was inconsistent with that of the criminal trial. RX A, as noted, was not a verbatim account. The actual questions posed and answers given are essential to impeachment of a

witness, and the method used by the Respondent here was an inexact substitute. In any event, the inconsistencies do not go to the key issue in this case: what occurred at the gas station?

With regard to this key issue, it was undisputed that Karnich and the Respondent stopped across the street from each other in opposite lots and watched what the other was doing. The Respondent indicated that the road was only one lane in each direction. Karnich, therefore, would have been able to observe what the Respondent was doing. In fact, the Respondent admitted that he gestured with his arms to communicate with Karnich.

The Respondent was an interested witness as a matter of law. He admitted that he was angry about Karnich's interactions with his family. He also testified that he wrote down Karnich's license plate number, ostensibly so he could report Karnich to the [REDACTED] police. He asserted that he only did this after Karnich began following him. This would mean that Karnich blatantly lied about seeing writing on a piece of paper at the vacant lot. The Court viewed Karnich's demeanor, however, and doubts that this occurred.

Karnich testified that after he realized the Respondent had written down his license plate number, he changed his motor vehicle registration to a post office box the next day. This indicates that his fears about the Respondent's intentions were genuine. The authenticity of his fear lends credibility to his account about the Respondent's actions.

The lack of judgment displayed by the Respondent also detracts from his credibility. He again admitted to driving that day outside the terms of his restricted license (see Case No. 82228/06, Specification No. 2, infra), claiming that he only did so because CPS called him and said that the children needed clothes. Even if he thus needed to drive the clothes over to CPS one wonders what the agency would have done had the Respondent said he was unable to drive he still stopped to get gas *and a lottery ticket*. These sorts of actions make him less credible.

In a situation like this, the Court must weigh the evidence and resolve conflicting testimony, see Matter of LaFemina v. Brown, 194 A.D.2d 405 (1st Dept. 1993), ultimately deciding who is more credible, Karnich or the Respondent. The Court had the opportunity to observe both, to see and hear them, and to observe their demeanor. In this regard, under the totality of the record, the Court credits Karnich, and finds the Respondent Guilty of Specification No. 1.

Specification No. 2

Having pleaded Guilty to the second specification in the second case, the Respondent is found Guilty.

Disciplinary Case No. 83617/08

The Department moved to dismiss both specifications in the third case. The first specification alleged that the Respondent failed to appear in [REDACTED] Court for a landlord-tenant matter. He was served by his landlord with a petition to vacate the premises or be evicted. The second specification alleged that the Respondent failed to appear in District Court for a small claims action. The action was brought by his landlord for damage to the same premises. The Advocate stated that because the Respondent defaulted in both matters, the relief sought was imposed: the Respondent was evicted and was adjudged to owe damages to the landlord.

The Department's position was that the litigation between the Respondent and his landlord was essentially a private matter. This Court agrees. The process served on the Respondent apparently was from the landlord himself or his attorney, not the [REDACTED] Court, so

he did not disobey any order of a judicial authority. Furthermore, the landlord received the relief he sought after the Respondent defaulted.

Thus, the Court recommends that the two specifications in Case No. 83617/09 be dismissed.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on April 30, 1991. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of threatening and taunting an off-duty [REDACTED] [REDACTED] police officer that had arrested his wife earlier in the day. This included writing down the license plate number of the officer's personal vehicle and displaying it to him. The officer got the message; he changed the address of his vehicle registration to a PO box the next day. The Respondent has also been found Guilty of driving, on two occasions, outside the terms of his restricted license. His license had been suspended for lack of insurance, which he was unable to pay. He also failed to tell his commanding officer that his license was suspended. This is important because the supervisors of a precinct command must know whether their officers are legally allowed to drive. Furthermore, driving with a suspended license is something for which this Department regularly makes arrests.

Although the Respondent mitigated to the driving specifications, they remain serious offenses. There was no valid reason for driving on the two occasions in question. Not only were they not emergencies, but the Respondent failed to consider the most obvious alternatives to

driving. The clearest of these would have been just not to go to the scene of a high school graduation party, where his wife and son had already been arrested, to see "how I can help." This misconduct alone merits the loss of 30 days of pay. See Case No. 72587/97, signed Sept. 5, 1998 (penalty of 30 vacation days for driving with a suspended license, failing to correct it when confronted by supervisor, and failing to notify commanding officer of the situation).

The Respondent's conduct toward Karnich also merits a serious penalty. See Case No. 84645/08, signed Mar. 16, 2010 (22 days served on suspension for threatening neighbor over telephone, then making a shooting gesture with hand). The Respondent essentially took an officer's legitimate police conduct and brought it to him when he was off duty. It is notable that the incident occurred during a downward spiral in the Respondent's life. Even after getting involved in the June 2006 dispute, which was literally on the level of a high school dispute, and ending up arrested, and even after his wife was arrested a second time in the August 2006 incident that very day, the Respondent still drove illegally *and* could not resist taunting Karnich when they saw each other near [REDACTED]

Thus, the Court recommends that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code of the City of New York, during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that the Respondent forfeit the 29 days already served on suspension as a result of the June 2006 arrest, and the 36 days served on suspension as a result of the August 2006 arrest for a total of 65 penalty days.

Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

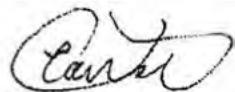
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CARLOS RUIZ
TAX REGISTRY NO. 899791
DISCIPLINARY CASE NOS. 82212/06, 82228/06 & 83617/08

In 2008 and 2009, the Respondent received an overall rating of 3.5 “Highly Competent/Competent” on his annual performance evaluation. He was rated 3.0 “Competent” in 2007. He has been awarded 15 medals for Excellent Police Duty and seven medals for Meritorious Police Duty.

[REDACTED] In 2007, he was placed in Special Monitoring Level III due to poor performance.

The Respondent has been the subject of one prior Trial Room adjudication. In 2005, he forfeited 5 vacation days and 15 pre-trial suspension days after a mitigation hearing for failing to appear for a scheduled court appearance, resulting in the issuance of a bench warrant; pushing his [REDACTED] into a door, causing her to suffer an injury; and failing to enroll his children in school for a one-month period.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials